

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

FILED
2006 JAN 13 P 2:43
DISTRICT COURT
SAN ANTONIO, TEXAS
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KENNETH ROBINSON

Plaintiff

v.

WAL-MART STORES, INC.

Defendant

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CIVIL ACTION NO.

§ A06 CA0051

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JURY DEMAND

ORIGINAL COMPLAINT

TO THE HONORABLE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS.

Now comes, Kenneth Robinson, Plaintiff in the above entitled cause number, and files this his Original Complaint complaining of Wal-Mart Stores, Inc., Defendant, and for cause of action would show unto the Court as follows::

Parties

1. Plaintiff is an individual residing in Ferris, California.
2. Defendant, Wal-Mart Stores, Inc., is a Delaware Corporation and may be served with process by serving its registered agent for service in the State of Texas, Corporation Service Company, 800 Brazos St., Suite 750, Austin, Texas 78701-2554.

Jurisdiction

3. This Court has jurisdiction of this action pursuant to 28 U.S.C. Section 1332(a), in that it is between citizens of different states and the matter in controversy exceeds \$75,000.00.

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Venue

4. Venue is proper in the Western District of Texas since the events giving rise to these claims occurred in the Western District of Texas.

Facts

5. On or about February 7, 2004, Plaintiff, Kenneth Robinson, was an invitee at the Wal-Mart Distribution Center in New Braunfels, Texas. Mr. Robinson had just delivered some merchandise at said facility. The Plaintiff then proceeded to use the restroom at the Defendants premises. While in the restroom, the Plaintiff, Kenneth Robinson, was sitting in the commode when suddenly and without any warning the commode collapsed to the side causing the Plaintiff to fall to the right side hitting the stall or wall of the stall. The Plaintiff was pinned to the wall and the commode for a period of time. However, the Plaintiff felt pain to his entire back, hip and throughout his body. Soon thereafter, the Plaintiff discovered that the commode was not bolted to the floor. This was an unreasonably dangerous condition. However, the Defendant did not take any measures to warn of this dangerous condition. Immediately thereafter, the Plaintiff notified employees of the Defendant of his incident and the commode falling over. Additionally, the Plaintiff informed the employees of the pain he was experiencing throughout his body. As a result, the Plaintiff was taken to a local hospital and treated and alleviate the pain throughout his body. Upon returning home, the Plaintiff continued to experience pain and discomfort and was seen by different medical providers over a period of time. The Plaintiff was diagnosed as sustaining severe and permanent injuries by said providers.

Negligence

6. The incident in question and Plaintiffs' injuries and damages were proximately caused by the negligence of Wal-Mart Stores, Inc. and/or employees of Wal-Mart Stores, Inc. acting within the course and scope of their employment. Briefly, the Defendant did not barricade the commode in question preventing any person from using it. Moreover, the Defendant did not take any measures to warn anyone of the commodes condition, in particular that the commode was not bolted to the floor or that it was loose and could tip over while being used. Defendant was aware or should have been aware of the commodes unreasonable dangerous condition. Additionally, the Defendant did not take fix the condition of the commode in question or take any reasonable steps in maintaining and/or fixing the commode in question. As such, this action is brought directly against Wal-Mart Stores, Inc. for all damages sustained as a result of this incident.

Damages

7. As a direct and proximate result of Defendant's negligence, Plaintiff, Kenneth Robinson, suffered the following elements of damages:

- a. Reasonable and necessary medical expenses incurred in the past;
- b. Reasonable and necessary medical expenses which, in reasonable medical probability, will be suffered in the future;
- c. Physical pain and mental anguish suffered in the past;
- d. Physical pain and mental anguish which, in reasonable medical probability, he will sustain in the future;
- e. Physical impairment sustained in the past and which, in reasonable probability will sustain in the future;
- f. Disfigurement;

- g. loss of earning capacity in the past; and
- h. loss of earning capacity which in reasonable probability he will suffer in the future;

Plaintiff, Kenneth Robinson, damages in these regards exceed the diversity jurisdiction minimum of Seventy Five and 00/100 (\$75,000.00) Dollars.

Jury Demand

- 8. Plaintiff hereby demands a jury trial of all issues.

WHEREFORE PREMISES CONSIDERED, Plaintiff demands a jury trial, and pray that the Defendant be cited to appear and answer herein, and that Plaintiff have judgment against the Defendant for:

- 1. Damages aforementioned;
- 2. Exemplary damages;
- 3. Prejudgment and post-judgment interest to the maximum extent allowed by law;
- 4. Court costs;
- 5. Attorney fees where authorized; and
- 6. Such other and further general and special, legal and equitable relief to which Plaintiffs may be entitled.

Respectfully submitted,

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By: 

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